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## REMARKS

### Status of Claims

#### Current Status

Claims 1, 3, 4, 8-50, 55-61 and 63-68 are pending. Claims 1, 3, 4, 8-50, 55-61 and 63-68 are subject to restriction/election.

#### Present Reply

In this reply, claim 42 is amended. No new matter has been added by way of this amendment.

### Restriction Requirement

Restriction has been required under 35 U.S.C. § 121 to one of three inventions:

- I. Claims 1, 3, 4, 8-34, 45-50, 55, 56, 59, 63 and 66-68, drawn to a non-aqueous modafinil solution, classified in class 514, subclass 615.
- II. Claims 36-40 and 57, drawn to a method of preparing an aqueous solution of modafinil, classified in class 424, subclass 400.
- III. Claims 41-44, 58, 60, 61, 64 and 65, drawn to a method of treating a disease or disorder, classified in class 424, subclass 489.

Applicants respectfully traverse the restriction requirement.

### Inventions I and II

The Examiner alleges that inventions I and II are related as process of making and product made. Applicants respectfully point out that invention I is a non-aqueous modafinil solution, and invention II is a process for making an aqueous modafinil composition. In other words, the process of invention II does not form the product of invention I. Therefore, inventions I and II are not related as process of making and product made.

Instead, the process of invention II includes the step of contacting a non-aqueous modafinil solution with an aqueous medium. In other words, the product of invention I is used in the process of invention II. Therefore, inventions I and II are related as product and process of

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using.

Applicants respectfully request that the Examiner affirm that inventions I and II are related as product and process of using.

#### Inventions I and III

The Examiner alleges that inventions II and III are related as product and process of using. Applicants respectfully point out that the product of invention II is an aqueous modafinil composition, and invention III is a method of using a non-aqueous modafinil solution. Therefore, inventions II and III are not related as product and process of using.

Instead, because the process of invention III involves the use of a non-aqueous modafinil solution, and because invention I (not II) is a non-aqueous modafinil solution, inventions I (not II) and III are related as product and process of using.

Applicants respectfully request that the Examiner affirm that inventions I (not II) and III are related as product and process of using.

#### Election

As required by 37 C.F.R. § 1.143, applicants hereby provisionally elect the subject matter of invention I for prosecution on the merits, encompassing claims 1, 3, 4, 8-34, 45-50, 55, 56, 59, 63 and 66-68. Applicants provisionally elect soft gelatin capsules as a single species. Claims 1, 3, 4, 8-34, 45-49, 55, 56, 59, 63 and 66-68 encompass the elected species.

#### Rejoinder

The examiner has required restriction between product and process claims. Applicants have elected claims directed to the product. Pursuant to MPEP §806.05(h), if the product claims are found allowable, the non-elected process claims should be considered for rejoinder.

#### Conclusion

Applicants believe that the foregoing constitutes a complete and full response to the Office Action of record. Favorable examination is respectfully solicited.

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Respectfully submitted,



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